

**TOWN OF NORTHFIELD, VERMONT
BOARD OF SELECTMEN
SPECIAL MEETING
Minutes of November 3, 2015**

- I. **ROLL CALL.** Chair John Quinn III, Select Board members Lynn Doney, Matthew Gadbois, Kenneth W. Goslant, and K. David Maxwell. Also present were Town Manager Jeff Schulz, Police Chief James Dziobek, Robert Halpert (Zalinger, Cameron & Lambek PC), Robert Appel (Kohn Rath Danon & Appel, LLP) and Kathleen Lott (*Northfield News*).

Chair Quinn called the meeting to order at 6:03 p.m.

II. **DISCUSSION**

- a. **Pre-termination Hearing (James Dziobek, Police Chief).** Manager Schulz stated that Town Attorney Robert Halpert would speak first regarding the background of and procedures for this hearing. Mr. Halpert said a letter was sent on October 13, 2015 from Manager Schulz to Chief Dziobek that listed a number of incidents and concerns that led to a decision to seek termination of Chief Dziobek's employment. Under Vermont law, Chief Dziobek is entitled to a hearing before the Select Board can take this action on this. That hearing can either be held in executive session or in open session. Chief Dziobek's notified Mr. Halpert that he would prefer to have this done in a public forum. Under Vermont law, a Police Chief can be dismissed if there is a determination of cause, which includes negligence in the line of duty or other miscellaneous misconduct. This procedure may not be comfortable for anyone present tonight but it is necessary under the circumstances. Manager Schulz will present information to the Select Board either through witness statements or documentation. Chief Dziobek and his attorney will be able to examine and question any of this information. They also will be allowed to provide their own witness statements and documentation. After all the information has been disseminated, the Select Board will go into a "deliberative session," which is held in executive session. There is no timeline for a decision to be made. Mr. Halpert said that any discussion in this pre-termination hearing must focus on the issues contained in the October 13, 2015 letter.

Robert Appel is the attorney representing Chief Dziobek. He has in contact with Mr. Halpert over this public hearing process and there are a number of concerns that he feels were left unresolved. This includes whether this hearing should be restricted to the issues contained in the aforementioned letter. Mr. Appel and his client also challenge the impartiality of the Select Board at this point as they believe that the decision to terminate Chief Dziobek's employment has already been made. For the record, Mr. Appel challenges the lack of due process in this matter. He also asks that all witnesses be sworn this evening and be subject to cross examination as this is a very serious matter and the decision made is subject to appeal through the judicial process.

Mr. Halpert has no problem with witnesses being sworn but he does not accept the suggestion that the Select Board is compromised and incapable of deciding this matter. Vermont law specifies that the Select Board, as the local legislative body, is the only entity that can make this decision. This is why the procedure has been created so that Manager Schulz will be the person to presenting information tonight rather than a Select Board member. Mr. Halpert added that he is not here tonight as an advocate for either side but merely here to ensure that proper procedure is followed. He believes that the Select Board members will take their responsibility seriously. He still maintains that this hearing should focus solely on issues raised in the October 13, 2015 letter.

Mr. Appel believes that it would have been better procedure to appoint an impartial hearing officer to present the information to the Select Board rather than using Manager Schulz in this role.

A member of the public asked a procedural question. She asked if the Select Board has violated Vermont's Open Meeting Law by first warning this meeting yesterday as an executive session only meeting but then re-warning it this afternoon (2:00 p.m.) to include an open public hearing. The revised agenda clearly was not posted at least twenty-four (24) hours before this meeting (which is what the Open Meeting Law requires for a Special Meeting). Mr. Halpert stated that the Town had to take precautions when warning this meeting since this is a personnel matter and the affected employee is entitled to confidentiality. It is up to the employee to make the decision whether the pre-termination hearing should be held in executive session or in a public forum. The meeting originally was warned as an executive session in the interest of employee confidentiality but the Town afterwards was advised that Chief Dziobek had requested a public hearing. By the time this information had been received, the meeting already had been warned so the wording was revised to include this public forum. Mr. Halpert stated that if Chief Dziobek and his attorney feel that this meeting has been improperly warned, the proper step would be to postpone this hearing until another night and after it has been warned to everyone's satisfaction. After conferring with his client, Mr. Appel stated that it was Chief Dziobek's request that this meeting be adjourned and a properly warned hearing be held at a later time. Mr. Halpert advised that there now is a timeline concern in that the hearing was required to be held within fourteen (14) days of the receipt of the aforementioned letter. Chief Dziobek and his attorney agreed to extend the timeline but there should be no significant delay or the letter sent will need to be reissued. He therefore advised that the Select Board should suspend this hearing and resume it at another time. Chair Quinn suggested that the hearing be resumed in exactly one week (Tuesday, November 10, 2015, at 6:00 p.m.). There were no objections.

III. ADJOURNMENT. Motion by Selectman Gadbois, seconded by Selectman Maxwell, to adjourn. **Motion passed 5-0-0.**

The Board adjourned at 6:16 p.m.

Respectfully submitted,

Jeff Schulz

Jeff Schulz, Acting Clerk

An audio recording of this meeting is available in the Town Manager's Office.

These minutes were approved at the regular Select Board meeting of November 24, 2015.